

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

ROBERT TROY MCCLURE,
#1420457,

Plaintiff,

v.

RICHARD BABCOCK,

Defendant.

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Case No. 6:20-cv-596-JDK-KNM

**ORDER ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Plaintiff Robert Troy McClure, a prisoner within the Texas Department of Criminal Justice, proceeding pro se, filed this civil rights lawsuit pursuant to 42 U.S.C. § 1983. This case was referred to United States Magistrate Judge, the Honorable K. Nicole Mitchell, for findings of fact, conclusions of law, and recommendations for disposition.

On November 17, 2020, Judge Mitchell issued a Report and Recommendation in this case. Docket No. 3. In that Report, Judge Mitchell found that Plaintiff accumulated at least three strikes prior to filing this lawsuit pursuant to 28 U.S.C. § 1915(g). Accordingly, the Report recommended that Plaintiff's motion to proceed *in forma pauperis* be denied and that the case be dismissed, with prejudice for the purpose of proceeding *in forma pauperis*. Judge Mitchell further recommended that the case should proceed if Plaintiff paid the full filing fee within fifteen days of the dismissal order.


A copy of the Report was sent to Plaintiff and the docket reflects that Plaintiff received the Report on December 3, 2020. Docket No. 4. To date, Plaintiff has not objected to the Report or otherwise communicated with the Court.

This Court reviews the findings and conclusions of the Magistrate Judge de novo only if a party objects within fourteen days of service of the Report and Recommendation. 28 U.S.C. § 636(b)(1). In conducting a de novo review, the Court examines the entire record and makes an independent assessment under the law. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1430 5th Cir. 1996) (en banc), *superseded on other grounds by statute*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days). Here, Plaintiff did not file objections in the prescribed period. The Court therefore reviews the Magistrate Judge's findings for clear error or abuse of discretion and reviews the legal conclusions to determine whether they are contrary to law. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989), cert. denied, 492 U.S. 918 (1989) (holding that, if no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law").

Having reviewed the Magistrate Judge's Report and the record in this case, the Court finds no clear error or abuse of discretion and no conclusions contrary to law. Accordingly, the Court hereby **ADOPTS** the Report and Recommendation of the United States Magistrate Judge (Docket No. 3) as the findings of this Court. The Court **DISMISSES** Plaintiff's civil rights lawsuit, with prejudice for purposes of proceeding *in forma pauperis* under 28 U.S.C. § 1915(g), but without prejudice as to

the refiling of his lawsuit without seeking *in forma pauperis* status. Finally, if Plaintiff pays the requisite \$400 filing fee within fifteen days of this Order, the lawsuit shall proceed as though the full filing fee had been paid from the outset.

So **ORDERED** and **SIGNED** this **31st** day of **January, 2021**.



JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE